IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.170 of 1996
IN
WRIT PETITION NO.1347 OF 1996

M/s. DBH International Ltd.,
a Company incorporated under the
Companies Act, 1956, with its
Bombay Office formerly situated at 30,
Imperial Chambers, Wilson Road,
Ballard Estate,
Bombay-400038, and its
registered office at N-75,
Connaught Circus,
NEW DELHI-110 001. Appellant
(Orig. Petitioner)

Vs

1. Their Workmen,
represented by the Transport
& Dock Workers' Union,
P. D'Mello Bhavan, P.D'Mellow Road,
Carnac Bunder,
Bombay-400 038.

2. Hon'ble Shri S.B.Panse,
Presiding Officer, Central Government,
Industrial Tribunal No.2,
having his office at 4th Floor,
City Ice Bldg., 298, Perin Nariman Street,
Fort, Bombay-400 001. Respondents.
(Orig. Respondents)

Mr C.U.Singh i/by M/s Haresh Mehta & Co for the Appellant-Management.

Mr S.M.Dharap, for Respondent No.1-Union/workmen.

CORAM : S.B.MHASE & D.B.BHOSALE, JJ.

DATED : 9th MARCH, 2005.

JUDGMENT: (PER D.B.BHOSALE, J.)

1. This Letters Patent Appeal is directed against the order dated 1.7.1996 passed by the

learned Single Judge in Writ Petition No.1347 of 1996, rejecting the petition in limine. The writ petition was filed against the Award dated 31.7.1995 passed by the Central Government Industrial Tribunal No.II (for short, "the Tribunal") in Reference No. CGIT-2/55 of 1993, by which the impugned retrenchment was held to be illegal and void. The Government of India, Ministry of Labour, by its letter dated 3.6.1993, had referred the following industrial dispute to the Tribunal for adjudication:

> "Whether the action of the Management of M/s DBH International Ltd is justified in retrenching S/Shri A.M.Ghosalkar, S.R.Parab, E.T.Deshmukh, Chiman Sawant, Baban Vethebkar, Mrs D.D.' Mello and Mrs Rajalakshmi H.Pillai with effect from 16.9.1991? If not, to what relief the workmen are entitled to?".

The aforesaid reference was made in pursuance of the failure report submitted by the Conciliation Officer to whom the dispute was referred pursuant to the demand notice dated 18.9.1991 given by the Secretary of Port and Dock Workers' Union, Bombay (for short, "the Union"), which was representing the workmen before the concerned authority.

2. The background facts sans unnecessary details are as follows.

. M/s DBH International Ltd - the appellant in this appeal, was a Clearing and Forwarding Agent (for short, "the Management") and they were holding Customs House Agent Licence for the said business since 1965. Till 1987, they conducted their business in the name and style of Dadabhoy Hornusjee and Sons Ltd. The case set up by the Management was that in 1990, on account of steady decline in business, a Voluntary Retirement Scheme (for short, "VRS") was announced by the Management in response of which few employees had availed it and left. 10 workmen only had remained in the employment consisting of the workmen named in the aforesaid reference (for short, "the workmen"). The VRS was objected to by the Union. The matter was carried into conciliation in which the Management was persuaded to withdraw the VRS. According to the Management, in 1991 due to national foreign exchange crisis, severe import restrictions were introduced in the Finance Act, 1991 with the result their business declined even further. By August, 1991 gross revenue earned by the Management was not even sufficient to pay the wage bill of 10 remaining workmen and, therefore, they were left with no option but to retrench the 7

workmen out of the remaining 10. On 16.9.1991, the retrenchment notices were offered to the concerned 7 workmen together with notice pay, retrenchment compensation, gratuity, leave encashment and salary for 16 days of September. The workmen refused to accept the notices as well as payment offered. A notice to the Government, as required under section 25F(c) of the Industrial Disputes Act, 1947 (for short, "I.D.Act"), was also given. The Union challenged the retrenchment vide their letter/demand notice dated 18.9.1991. The Conciliation Officer held the meeting with the Union and the Management on 20.9.1991 and having failed to conciliate, issued a failure report on 9.10.1991. In April, 1992, 2 out of the remaining 3 workmen resigned from the service and the last one was retrenched. Thus, according to the Management, the business and establishment was effectively closed down as no workmen were employed after April, 1992. Against this backdrop, the aforesaid dispute was referred under section 10(1) of the I.D. Act by the Government of India for adjudication.

3. The Tribunal decided the reference vide its Award dated 31.7.1995, holding that though the action of the Management was justified in retrenching the

workmen with effect from 16.9.1991, the action was illegal and void and, therefore, the workmen were entitled to reinstatement with full back wages and continuity in service. A categoric finding was recorded by the Tribunal that the amount tendered as retrenchment compensation was less than what ought to have been offered under section 25F (b) of the I.D. Act relying on the Judgment of this Court in **Trade Wings Limited Vs. Prabhakat Dattararam Phodkar, 1992 I CLR 480**.

4. Feeling aggrieved by the Award dated 31.7.1995 passed by the Tribunal, the Management preferred Writ Petition No.1347 of 1996. The writ petition was, however, rejected summarily by the learned Single Judge vide order dated 1.7.1996, which is impugned in the present Letters Patent Appeal. The order passed by the learned Single Judge (S.H.Kapadia, J.) dated 1.7.1996 reads thus :

> "In the present matter, retrenchment compensation has not been paid as per provisions of Section 25F of the Industrial Disputes Act. It is true the Reference made by the Government is only regarding justifiability and not

illegality, but in this case, issue No.2 indicates that parties went before the Industrial Court on both the questions. Hence, I do not wish to interfere.

. The second contentions raised by the petitioners that the case on illegality is hypertechnical because the workers have been paid under the head "Retrenchment Compensation". The amount offered is short and there is noncompliance of Section 25F. Hence Lower Court was right in its findings. However, Company claims that it has closed down and, therefore, reinstatement cannot be granted.

. In this connection, Mr Dharap for the workers states that if company offers the wages upto 31-12-95 (the date on which offer was made by the workmen to accept wages) and if all other dues are paid upto date on 31-12-95, then, he will not press for reinstatement.

. In the circumstances, if the company pays the dues upto date on the basis of cut off date being 31-12-95 then the award will be marked satisfied. The

company will comply with Award within eight weeks.

. If the Award is not satisfied, then the workers will be free to enforce the impugned Award. Subject to above, Writ Petition is rejected."

5. We heard the learned counsel appearing for the parties at great length, perused the impugned order, the Award dated 31.7.1995 and other material placed before us. To avoid repetition, we propose to make reference to the submissions advanced by the learned counsel for the parties at an appropriate stage/s in a later part of the Judgment. However, after hearing the arguments advanced by the learned counsel for the parties, in our opinion, the following questions fall for our consideration in the instant appeal. Let us make it absolutely clear that the learned counsel for the parties did not advance arguments on any other issue/s except the following legal issues formulated by us.

I) Whether the Tribunal travelled beyond the clear terms of the order of reference, holding that the word "justified" included within its scope "legality" of the action, while dealing with the dispute referred to under section 10 of the I.D.Act as to 'whether the action of the management was 'justified'

in retrenching the workmen with effect from 16.9.1991?

II) Whether the workmen had confined their allegation to justification and the employer's motive in retrenching them and had never at any stage prior to the order of reference sought to challenge or even questioned the legality of the action, i.e. compliance with the regulatory requirement laid down in section 25F of the I.D.Act? If yes, whether the Tribunal was justified in examining the legality of the action?

III) Whether, in the absence of the pleadings and /or sufficient notice to the Management in respect of the alleged short fall in the payment of retrenchment compensation, the Tribunal was justified in holding that the payment offered by the Management as retrenchment compensation under section 25F of the I.D.Act was inadequate and hence it was illegal and void and, therefore, the workmen are entitled to reinstatement in service with full back wages and continuity in service?

IV) While computing the retrenchment compensation under section 25F of the ID Act, the principle evolved by the Supreme Court while interpreting the provisions contained in section 4(2) of the Payment of Gratuity Act, 1990 in **Jeewanlal Limited Vs.The**

Appellate Authority, (1984) 65 FJR 204 and which was followed by this Court in **Trade Wings Limited Vs. Prabhakar Dattaram Phodkar, 1991-II LLN 500**, could be applied to hold that there was a short payment of retrenchment compensation which is equivalent to no payment and hence the impugned retrenchment is invalid. In other words, whether the retrenchment compensation under section 25F is payable on the basis of monthly wages for 26 working days and his average rate of daily wages should be ascertained on that basis and not by taking the wages for 30 days or fixing his daily wages by dividing his monthly wages by 30?

V) Whether the amount offered to in the retrenchment notice under other heads, which was not required to be offered as a condition precedent under section 25F of the ID Act, could be taken into account to make up a shortfall, if any, in paying the amount required as a condition precedent to retrenchment. In other words, if the retrenchment was justified and that a tender of much larger amount was in fact made at the time of retrenchment, whether the Tribunal was justified in ignoring the excess amount, which was not required to be offered as condition precedent, and holding that there was a shortfall in offering the retrenchment compensation under section 25F?

VI) Whether the Tribunal erred in awarding reinstatement with full back wages after having accepted that all work had come to an end, merely because the question of closure was not referred to him?

VII) If it is accepted, that the management was liable to tender an amount as retrenchment compensation under section 25F of the ID Act on the basis of the monthly wages for 30 days, whether the amount actually offered as retrenchment compensation was adequate?

6. We would like to start with the legal Issues nos IV, V and VI raised in this petition. Mr Singh, learned counsel for the Management, submitted that the Tribunal erred in holding that there was a shortfall in calculation of retrenchment compensation based on the Judgment of this Court in **Trade Wings Ltd Vs. Prabhakar Dattaram Phodkar 1991 -II LLN 500**. According to Mr Singh, this Court in the case of **Trade Wings** has applied the principle evolved by the Apex Court while interpreting the provisions of Section 4(2) in the Payment of Gratuity Act, 1970 (for short, "Gratuity Act") in **Jeewanlal Limited Vs. The Appellate Authority, (1984) 65 FJR 204** overlooking the material differences in the two

statutes, i.e. I.D.Act and Gratuity Act. He drew our attention to paragraph 10 of the **Jeewanlal's** case and in particular the words "rate of wages" used in section 4 of Gratuity Act and contended that such words have not been used in section 25F of the I.D.Act and, therefore, it cannot be said that the retrenchment compensation was payable on the basis of monthly wages for 26 working days. In support of that submission he also invited our attention to the definition of "average pay" in section 2(aaa) of the I.D.Act and contended that such definition does not exist in Gratuity Act. He further submitted that the Court can compare the words used in two different statutes framed by the same Legislature to find out whether the words used in the earlier statute are missing in later statute and, if so, it may be fair to presume that the omission of such words in later statute or use of clearly different words was deliberate. In support of that submission, he invited our attention to section 4(2) of Gratuity Act and sections 25F and 2(aaa) of the I.D.Act and further contended that Gratuity Act not only omits the concept of "average pay" and introduces a new concept of "rate of wages" but further the Gratuity Act was amended in 1987 to add an explanation in section 4(2) based on Jeewanlal case. In support of

his contentions, he placed reliance upon the Judgments of the Apex Court in **ESIC Vs. Tata Engineering and Locomotive Company, AIR 1976 SC 66, and UOI Vs. Raman Iron Foundry, 1974 (2) SCC 231 and in MSCO Vs. Union of India, (1985) (1) SCC 51 and Sri Narakesari Prakashan Vs.ESIC, 1985 -I LLJ 1 (SC)**. It was further submitted that even if it is assumed for the sake of argument that the amount towards the retrenchment compensation under section 25F was short, the Tribunal failed to appreciate that the total amount offered to the workmen was more than what they were required to be paid as a condition precedent under that section and hence it ought to have been treated as substantial compliance with the underlying requirement of the statute. In any case, according to Mr Singh, it was not open to the workmen to raise an issue of short payment since they had refused to accept envelops without even examining their contents so as to contend that the amount tendered was short.

7. On the other hand, Mr Dharap, learned counsel for the Union, submitted that the Tribunal has rightly relied on the Judgment of this Court in **Trade Wings** case which applied the principle evolved in **Jeewanlal's** case while interpreting the provisions

contained in section 4 of the Gratuity Act. Though the language of the provisions contained in section 25F read with 2(aaa) in I.D.Act and section 4(2) of the Gratuity Act is different to some extent, the principle for arriving at the average pay is one and the same and, therefore, the action of retrenchment is rightly held to be illegal on the ground of short payment. Mr Dharap further submitted that the Judgment of this Court in **Trade Wings case** has not yet been set aside and it is followed by our High Court in several other cases. He took us through section 2 (aaa) and urged that independent of the Jeewanlal's case, the basis for calculation and division by 26 is the correct, legal and appropriate method. In so far as the excess payment is concerned, he submitted that the provisions of section 25F (b) is imperative in character and, therefore, the requirement to comply with these provisions has been held to be mandatory before the retrenchment of a workman is given effect to **in Krishna Bahadur Vs. M/s. Purna Theatre & Ors**, **JT 2004 (7) SC 13**. He also placed reliance upon the Judgment of Orissa High Court in **Utkal Asbestos Vs. T.S.Rao, 1991-II CLR 941**.

8. In order to decide these questions, it will be

useful to notice the provisions of Section 25F and 2 (aaa) of the I.D.Act and sub-section (2) of section 4 of Gratuity Act which are quoted below.

> "25F. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by

notification in the Official Gazette)".

"2(aaa) "average pay" means the average of the wages payable to a workman--

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked".

"4(2) For every completed year of service or part thereof in excess of six months the employer shall pay gratuity

to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

. Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

. Provided further that in the case of (an employer in a seasonal establishment and who is not so employed throughout the year), the employer shall pay the gratuity at the rate of seven days' wages for each season".

9. This Court in **Trade Wings** case had an occasion to consider similar situation and deal with the aforesaid provisions in both the statutes. After having considered the relevant provisions and the Judgment of the Apex Court in **Jeewanlal's** case, this Court in **Trade Wings** case applied the principle evolved by the Apex Court and held that the retrenchment compensation is payable on the basis of

monthly wages for 26 working days and not 30. It will be useful to quote relevant observations in paragraph 15 of the Judgment in **Trade Wings** case, which reads thus:

> "15. ... ... In my judgment, there is no significant distinction between the provisions of Section 4(2) of the Payment of Gratuity Act and Section 25F of the Industrial Disputes Act, so as not to make applicable the above decision which is rendered under the Payment of Gratuity Act to the case at hand. Merely because the phrase "average pay" has been separately defined under Section 2 (aaa) of the Industrial Disputes Act, that does not detract from the view that retrenchment compensation should be computed on the basis of the monthly pay in respect of 26 working days. I see no reason why the said principle should not apply to the provisions of Section 25F of the Industrial Disputes Act. Hence I hold that the retrenchment compensation payable under Section 25F (b) of the

> Industrial Disputes Act is required to be computed on the basis of workman's monthly wages for 26 working days. The fifteen days average pay has to be worked out on the basis of his monthly wages drawn by him for working days. His daily rate of wages should be ascertained on the basis of the wages earned for 26 working days".

The Apex Court in **Jeevanlal's** case had observed thus:

> "For the purpose of computation of "fifteen days wages" of a monthly rated employee under Sub-section (2) of S.4 the monthly wages last drawn by him should be treated as wages for 26 working days and his daily rate of wages should be ascertained on that basis and not by taking the wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30".

10. The thrust, in **Jeewanlal's case** for taking aforesaid view, was on the expressions "at the rate" and "on the rate" as occur in sub-section (2) of section 4 of the Gratuity Act. In paragraph 10 of

the judgment in **Jeewanlal's case**, the Apex Court had observed that the word "rate" occurs twice in that provision and it necessary involves the concept of "actual working days". It was further observed that for the purpose of computation of 15 days wages of a monthly rated employee under sub-section (2) of section 4 of Gratuity Act, the monthly wages last drawn by him should be treated as wages for 26 working days and his daily rate of wages should be ascertained on that basis and not by taking the wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. In paragraph 10 of the judgment a specific reference to the Judgment in **Shri Digvijay Woollen Mills Ltd Vs. Mahendra Prataprai Buch reported in AIR 1980 SC 1944** was made in which the observations made by the Gujarat High Court were quoted with a rider that the view expressed by Gujarat High Court appears to be legitimate and reasonable. The relevant observations made by Gujarat High Court read thus :

> "The employee is to be paid gratuity for every completed years of service and the only yardstick provided is that the rate of wages last drawn by an employee concerned shall be utilised and on that basis at the rate of fifteen days' wages

> for each year of service, the gratuity would be computed. In any factory it is well known that an employee never works and could never be permitted to work for all 30 days of the month. He gets 52 Sundays in a year as paid holidays and, therefore, the basic wages and dearness allowance are always fixed by taking into consideration this economic reality..... A worker gets full month's wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days. The other extra holidays may make some marginal variation into 26 working days, but all wage boards and wage fixing authorities or Tribunals in the country have always followed this pattern of fixation of wages by this method of 26 working days".

The Madras High Court also had an occasion to deal with similar question in **Mgmt of Shadlow India Ltd, Madras Vs. Presiding Officer, Principal Labour Court, Madras and in 2000 II CLR 510**, which applied the same principle relying on the judgement in Trade

Wings' case.

11. It is against this backdrop we proceed to consider the provisions contained in section 25F and section 2(aaa) of the I.D.Act to find out as to whether in the present case it is possible to apply the principle evolved by the Apex Court in **Jeewanlal's case** or to take similar view independent of that principle. Before we go to the said provisions, we may note the basic difference between the Gratuity Act and the I.D. Act. In Gratuity Act, the subject of payment of gratuity is restricted only to a particular section of employees who were entitled to the payment of gratuity because of their length of service. The Gratuity Act, therefore, operated in a restricted sphere in contradistinction with the I.D.Act which is a broader enactment in the sense that it takes into consideration the industrial disputes of all kinds including those who are the workmen even for a short duration. It will be seen that the difference can be noted because of the peculiar provisions, where a workman merely having worked for 240 days in a year is clothed with some rights in total contradistinction to the Gratuity Act, where such a person may not be entitled to any rights.

12. Section 25F (b) of the I.D.Act, provides that a workman who has been in continuous service in any industry for not less than one year shall not be retrenched until he has been paid, at the time of retrenchment, compensation which shall be equivalent to "fifteen days average pay" for every completed year of continuous service or any part thereof in excess of six months as a condition precedent to retrenchment. Section 2 (aaa) of the I.D.Act defines "Average Pay" and that definition is provided in the Act only for determining the amount of retrenchment compensation. Section 2 (aaa) set forth the three categories of the workman in its clauses (i), (ii) and (iii) as monthly, weekly and daily paid workman and further a "residual category". The residual category is that of a workman whose average pay cannot be calculated upon any of the cases fall in the three categories. For instance the monthly workman, who during three months or part thereof, preceding the date on which average pay becomes payable, if did not work, such workman or quarterly paid or fortnightly paid workman would fall in the residual category. The pay of a workman falling in the residual category is required to be calculated as the average of the wages payable to him during the

period that he "actually worked". Similarly, clause (iii) of section 2 (aaa) provides the wages payable to ’daily paid workman’ on the basis of the average of the wages paid to in twelve "full working days" preceding the date on which the average pay becomes payable. The expression "actually worked" and "full working days" as occur in the residual category of workmen and daily paid workmen, in our opinion, clearly and necessarily involves the concept of "actual working days". Clauses (i) and (ii) of section 2 (aaa), which speak about monthly and weekly paid workman, though do not use the expressions "full working days" or "actually worked", while interpreting the definition of "average pay" as a whole we find no reason to make any distinction between the different categories covered by section 2(aaa). The difference in the language of the sections 25F of the I.D.Act and 4(2) of the Gratuity Act would not have any effect on the interpretation of section 25F. The concept of "actual working days" is clear in these two different enactments. It is thus clear that the definition of "Average Pay" itself, independent of the principle evolved in **Jeewanlal’s case**, would clearly and necessarily involves the concept of "actual working days’. In other words, from the days on which workmen remain on

work or do their duty only require to be taken into account for computing the average pay. In case of monthly workmen, the computation of "fifteen days average pay", therefore, will have to be made by using a divider of 26 days and not 30 days. In the instant case indubitably, the workmen in question were monthly paid workmen. The correct method for computing "fifteen days average pay" under clause (b) of section 25F, therefore, would be first to arrive at day’s pay and then to multiply by 15 and for that purpose, the average monthly salary of the workman be divided by 26. It is not disputed that in the present case the retrenchment compensation that was tendered by the Management was computed by using a divider of 30 days. We have, therefore, no hesitation in holding that the retrenchment compensation tendered by the Management was short. In view of the observations made herein above, the Judgments relied upon by the learned counsel for the Management are of no avail the appellant.

13. This takes us to consider the next submission of the learned counsel for the Management that since the retrenchment was held to be justified and that tender of much larger amount was in fact made at the time of retrenchment, it cannot be held that there

was a short payment. It is true that along with the retrenchment compensation, other amounts such as gratuity, salary due in lieu of leave and salary earned for September, 1991 was also tendered. The notice salary of one of the workmen viz. Anant Ghosalkar was mentioned as Rs.2265.30 and taking divider of 30 days the total retrenchment compensation worked out was Rs.10,264.00. However, the actual amount that was tendered was Rs.24372.30. It was, therefore, contended that since the actual amount was much larger than what Management was liable to pay as retrenchment compensation as a condition precedent, the excess amount ought to have taken into account for making a shortfall good. Mr Dharap on the other hand contended that the provisions of section 25F(b) of I.D.Act being mandatory in nature, it was obligatory on the part of the Management to tender the correct amount as required under section 25F (b) and short payment, if any, makes the action of retrenchment illegal and void. The aforementioned facts and figures are not disputed by either of the parties. The question is only whether the excess amount can be adjusted to make the short payment good. Keeping that in mind and considering the provisions of section 25F(b) of I.D.Act, it is clear that the Management ought to

have tendered the amount as retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service and it ought to have arrived at the average pay dividing the salary by 26 days and not by 30 days. Admittedly, the Management while tendering the retrenchment compensation had used the divider of 30 days. It is well settled that the provisions contained in Section 25F are mandatory in nature and noncompliance thereof in any manner whatsoever would render the action of retrenchment illegal and void. It would be useful to make reference to the judgment of the Apex Court in **Krishna Bhadur case** (supra) wherein while considering the provisions of section 25F(b), the Apex Court in paragraphs 12 and 13 thereof held thus :

> "12. It is neither in doubt nor in dispute that the provision of section 25F(b) is imperative in character. The provision postulates the fulfilment of the following three conditions:
>
> (i) One month’s notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;
>
> (ii) Payment of compensation equivalent to fifteen days, average pay for every

> completed year of continuous service or any part thereof in excess of six months; and
>
> (iii) Notice to the appropriate government in the prescribed manner.
>
> 13. The requirement to comply with the provision of section 25F(b) has been held to be mandatory before retrenchment of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio".

The Apex court in that case was dealing with the submission that there was non-compliance of requirements of section 25F(b). Keeping the observations made by the Apex Court in the aforesaid paragraphs in **Krishna Bahadur's** case in view and the plain reading of section 25F (b), it is clear that the said provision is mandatory and, therefore, the action of retrenchment cannot be justified if there is a short payment of retrenchment compensation and in the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio. The amount tendered under

other heads, under any circumstances, cannot form a part of retrenchment compensation. If the submission that the excess amount paid under other heads, which was not a condition precedent, is taken into account to make the short payment good, that will not only frustrate the very object of section 25F but it would encourage the employer to play mischief while retrenching/terminating the services of the workmen. Therefore, it would not be possible for us to hold that the excess payment made under different heads can be adjusted to make shortfall, if any, in the payment of retrenchment compensation good and thereby validate the action. It is mandatory to comply with the requirements in section 25F (b) by tendering the correct amount of retrenchment compensation and no other amount paid along with retrenchment notice, which is not a condition precedent for the action of retrenchment, can be adjusted to make the short payment good. The Tribunal was justified in ignoring the excess amount, which was not required to be offered as a condition precedent.

14. We would now like to consider the submission of the learned counsel for the Union that the amount tendered by the Management as retrenchment compensation was short even if it is calculated on

the basis of monthly wages for 30 days. Mr Dharap placed on record a chart showing that the amount tendered to all the workmen was short even by using a divider of 30 days. Mr Singh, learned counsel for the Management, strongly objected to the chart tendered by Mr Dharap contending that it cannot be taken into consideration since the Management did not have an opportunity to either verify the correctness of the figures mentioned in the chart or to meet that allegation before the Tribunal. Though prima facie we found that the figures mentioned in the chart, if were taken as correct, the amount tendered as retrenchment compensation under section 25F even by using a divider of 30 days was wrong. However, we refrain from recording positive finding to that effect for the following reasons: firstly, the chart was not placed on record before the Tribunal giving an opportunity to the Management to verify the figures mentioned therein, secondly, we have already recorded a finding that the average pay ought to have been computed by using a divider of 26 days and not 30 days, and thirdly it was not disputed that if the divider of 26 days is used for computing "15 days average pay" then the payment offered towards retrenchment compensation was short. In view thereof we leave this question raised by Mr Dharap as it is.

15. That takes us to consider point no. III. Mr Singh contended that in the absence of any pleading whatsoever either in the statement of claim or even in the rejoinder to the effect that there was a shortfall in the amount of retrenchment compensation offered, the Tribunal erred in allowing evidence on this aspect, and even if the evidence had come on record, erred in examining and relying upon the same. In support of that submission, he placed heavy reliance upon the judgments of the Apex Court in **Shankar Chakravarti Vs. Britannia Biscuit Company, (1979) 3 SCC 371** and **the Management of Hindustan Steel Vs. The Workmen, AIR 1973 SC 878**. On the other hand Mr Dharap, learned counsel for the Union, took us through the statement of claim, affidavits filed by both sides and contended that the plea of short payment was raised in the pleading and the parties went before the Industrial Tribunal on this question also and in view thereof it cannot be said that there was no pleading.

16. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because other side has no notice of it and, if entertained, it would be

tantamount to granting an unfair advantage to the first mentioned party. In other words, the rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading, there is no question of proving something which is not pleaded. The Apex Court has reiterated the aforesaid principle in **Shankar Chakaravarti's case** (supra). In **Management of Hindustan Steel case** (supra) while considering the plea of infirmity of retrenchment notice, it was observed that a general plea that the grounds of retrenchment were false, is not specific and precise enough to enable the employer to meet it. Keeping the proposition of law laid down by the Apex Court in the aforesaid judgments in view, we examined the pleadings.

17. It is true that the demand notice dated 18.9.1991, though states that the retrenchment was illegal and unjustified, except the word 'illegal' no illegality was alleged in the demand notice or reference to the noncompliance with regulatory requirements laid down in Section 25F or any other provision of I.D.Act for that matter was made

therein. The failure report under section 12 (4) of I.D.Act also does not make any reference to the short payment. However, from the perusal of the statement of claim that was filed by the workmen clearly states that "abrupt termination of services of seven workmen by way of retrenchment is illegal, improper, uncalled for and unjustified". Further in paragraph ten thereof the categoric statements were made to the following effect:

> "That the company issued retrenchment notice dated 16/9/1991 and offered one month's notice wages and retrenchment compensation as provided in clause (a) and (b) of section 25F of Industrial Disputes Act, 1947, but the company has not clarified for how many years of service the retrenchment compensation is paid and, therefore, the said notice is defective. And, therefore, the retrenchment of the workmen is illegal. Also the company has failed to comply with Section 25F (C) i.e. serving notice in prescribed manner on the appropriate Government. The Union States that clauses (a), (b) and (c) of

> Section 25 F should be complied with simultaneously before effecting retrenchment".

It was further stated in the statement of claim that the Management failed to comply with the mandatory provisions of law and, therefore, the retrenchment of workmen was illegal. Per contra, what the Management in their written statement in reply to paragraph 10 had stated was that they complied with all the requirements of law including serving the notice to the government authorities. They had not stated anything in reply to the aforesaid averments in paragraph 10 of the statement of claim. The Management in paragraph 11 of the written statement had stated that "the Court cannot go beyond justifiability or fairness of retrenchment and the Court has no jurisdiction to adjudicate upon the legality of retrenchment" and further that "Union had no right to raise an issue of legality of retrenchment and the Tribunal ought to have confined to the terms of reference and had no power to enlarge its scope". In rejoinder filed by the Union, they had reiterated the statements made in the statement of claim and had categorically denied that the Management has complied with all the provisions of

law. From the perusal of the affidavit of one of the workmen Mrs Dammer D'Mello filed before the Tribunal in lieu of her examination in chief in paragraph 9 thereof she had stated thus ;

> "9. I say that the amount of retrenchment compensation offered by the Company as per provisions of Industrial Disputes Act, Sec.25(F) to all the retrenched workmen is less than they are entitled. For example, I have put in 25 years' continuous service and my monthly salary was Rs.3,044.65 and, therefore, my retrenchment compensation amount should be Rs.38,058.12 but I was offered only Rs.33,597.00".

There was no cross-examination by the Management in respect of the statements made in paragraph 9. The Management in their affidavit dated 14.6.1995 filed by one Raman Mistry had stated that "dues offered were offered as per the law after averaging three months salary of each workman and if there is any difference it was unintentional and the company had complied with the substantial requirement of law". From the perusal of the aforementioned pleadings and

the evidence, we are of the considered opinion, that it cannot be said that there was no pleading or no evidence was led by the parties in respect of the alleged shortfall in the amount of retrenchment compensation tendered by the Management. We proceed to record our reason for arriving at this conclusion. In the statement of claim, the Union had categorically stated that the company had not clarified for how many years of service the retrenchment compensation was paid and, therefore, the said notice was defective. They had further stated that clauses (a), (b) and (c) of section 25F are mandatory and have not been complied with. Since the particulars as sought in paragraph 10 were not given by the Management, in our opinion, except the general statement that the provisions of clause (b) of section 25F had not been complied with by the Management, the Union could not have stated anything more than what had been stated in the statement of claim. Had the Management given all the particulars in the retrenchment notice, probably the Union could have made positive statement to the effect that there was a short payment. Since the retrenchment notice itself was vague which did not clarify as to for how many years of service the retrenchment compensation was offered, it was not possible to state anything

more than what had been stated in the statement of claim. Moreover, from the perusal of the written statement, it is clear that the Management did have sufficient notice of the stand of the Union. As a matter of fact, in paragraphs 5 and 11 of the written statement, they had categorically stated that the Court can only adjudicate as to the justifiability or fairness and not the legality of the notice and that it was not open for the Union to allege that the retrenchment is illegal. That shows that the pleadings were absolutely clear to understand or to mean that the grievance of incorrect tendering of the amount as retrenchment compensation was made by the Union and that the parties went before the Tribunal on both the questions. The evidence of D'Mello, one of the workmen, shows that the grievance about the short payment was made. Under the circumstances, it is not open to make a grievance that the Management had no opportunity and that the issue was discussed and considered by the Tribunal without any notice. As a matter of fact, from the evidence of Mistry, the witness of the Management, wherein he has stated that "if there is any difference, it was unintentional" shows that the Management was not sure as to whether the amount offered was accurate. From the contents of the written statement and the affidavit, as also

the contentions advanced before the Tribunal and this Court it is clear that the objection of the Management was not as whether there existed pleadings but to the jurisdiction of the Tribunal to examine the legality by expanding the scope of the reference.

18. Thus, it will be seen that, though, there is a definite injunction against the Court not to entertain the questions which are specifically not raised, the Apex Court has permitted to raise certain questions which were directly covered by the provisions in this beneficial legislation. Looking to the overall material placed before us, we are of the considered opinion that the workmen had undoubtedly raised the question of short payment and it was correctly understood by the Management and rightly entertained by the Tribunal. Having so observed, in our opinion, the judgments relied upon by the learned counsel for the Management are of no avail to the Management.

19. In so far as legal issues I and II are concerned, Mr C.U. Singh submitted that by now it is well settled that the Tribunal cannot enlarge the scope of the reference by deciding matters not referred to it. In other words, the reference made

in the instant case was only to examine as to whether the action was justified and, therefore, going into a legality of the action was wrong and amounts to enlarging the scope of the reference. He placed heavy reliance upon the following judgements in support of his submission. (i) **Delhi Cloth and General Mills Vs Their Workmen, 1967 - I LLJ 423, (ii) Firestone Tyre & Rubber Company Vs Workmen, (1981) 3 SCC 451 (iii) Pottery Mazdoor Panchayat V/s The Perfect Pottery Company, AIR 1979 SC 1356 and (iv) Sitaram Vishnu Shirodkar Vs The Administrator, Govt. of Goa, 1985 - I LLJ 480**. It was further submitted that legality and justifiability have always been differently understood in industrial adjudication, the former referring to compliance with regulatory provisions of the Act while latter refers to the justification for taking a decision or action against the workmen. Reliance was placed on **Agra Electric Company Vs Workmen (1983) 1 SCC 436 and Syndicate Bank Vs K.Umesh Nayak, AIR 1995 SC 319** in support of this submission. In view of the law settled by the Apex court in the aforesaid judgments and in several other judgments, it was not open to the Tribunal to fall back upon the dictionary meaning of the word "justify" or "justifiable". Reliance was also placed on the judgment of Workmen of **Coimbatore**

Pioneer "B" Mills Vs. Labour Court, 1980-I LLJ 503; (1979) 54 FJR 236 (SC); Shankar Kishan Nikam Vs. Bhide & Sons (1983) 46 FLR 95 (Bom-DB); International Industries Vs. K.G.Sawant (1984) 48 FLR 376 (Bom) and Shiv Kumar Vs State of Haryana (1994) 4 SCC 445 in support of this submission.

20. On the other hand, Mr Dharap, learned counsel for the respondent submitted that the word "justified" included within its scope "legality" of the action and, therefore, while dealing with the dispute referred to under section 10 of the ID Act, the Court can also examine the legality of the action. According to Mr Dharap, in the present case, what was referred to was the action of the management and, therefore, the term "action of the Management" includes action in law as well as action on fact. The term "justified" is, therefore, liable to be interpreted to mean whether the action of retrenching the workmen is justified in law as well as on fact. He further submitted that in industrial jurisprudence while interpreting the provisions of law, one cannot be too technical or pedantic and the Court is not expected to interpret the words in the strictest sense of the term. In support, Mr Dharap placed reliance upon the judgment of the Madras High Court

in **Enfield India Limited Vs. Second additional Labour Court, Madras, Vol.59 F.J.R. 365** which has relied on the observations made by the Apex Court in **Express Newspapers (P) V. The Workers, (1992) 23 FJR 1**. According to Mr Dharap, the Tribunal while deciding the reference has sufficient power as also a duty to find out what was the real dispute and decide it and not to throw it out on a mere technicality. In short, according to Mr Dharap, the Tribunal was justified in considering the legality of the action. Our attention was also drawn to the provisions of section 11A of the ID Act which, according to Mr Dharap, comes into effect only on the reference made by the appropriate Government under section 10. Section 11A uses the two terms: "discharge" and "dismissal". Mr Dharap further submitted that the word "discharge" cannot be taken in the sense as punitive discharge or dismissal only but has to be interpreted to mean "discharge" of any kind of termination including "retrenchment" and, therefore, the legality can be gone into while considering the justifiability of the action. In support of this submission, he placed reliance upon **The Workmen of M/s firestone Tyre & Rubber Co of India (Pvt) Ltd Vs. The Management and Ors, (1973) I LLJ 278**. In short, Mr Dharap submitted that the Tribunal's power in an

adjudication proceeding relating to discharge or dismissal of a workman should not be limited.

21. Mr Singh, learned counsel for the appellant, in reply to the submissions made by Mr Dharap in respect of section 11A of the ID Act, submitted that section 11A was introduced only to remove the vice of lack of power to x-ray disciplinary actions, firstly, by re-evaluating the evidence led at a domestic enquiry and secondly by substituting a lighter punishment where the Court or Tribunal felt the punishment was not proportionate to the proved misconduct. In other words, section 11A was introduced solely to deal with disciplinary cases and this is the manner in which the section has consistently been interpreted and applied for all these years. In other words, punitive action is by way of "discharge" or "dismissal" as contemplated in section 11A and, therefore, the interpretation placed by Mr Dharap of the provisions of section 11A is uncalled for. Both the learned counsel appearing for the parties placed reliance upon the few judgments of the Apex Court in support of their submissions on the provisions of section 11A of the Act to which we will make reference in the latter part of the judgment, if we find it necessary.

22. It would be useful to reproduce the provisions contained in section 10(4) of the ID Act, which deals with Reference of disputes to Boards, Courts or Tribunals, for better appreciation of the submissions advanced by the learned counsel appearing for the parties. Section 10(4) reads thus:

> "10. Reference of disputes to Boards, Courts or Tribunals:- ... ..
> (4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be , shall confine its adjudication to those points and matters incidental thereto."

It clearly provides that an industrial dispute which has been referred to by the appropriate Government has to specify the points of dispute for adjudication and the Tribunal shall confine its adjudication to those points and the matter incidental thereto. This

only means that the Tribunal must confine its attention to the points specifically mentioned and matter which is incidental thereto. However, it would be useful to see as to how the Apex Court, while dealing with this section in **Express Newspapers (P) Ltd Vs The Workers, (1962) 23 FJR 1**, had looked at it which observed as follows:

> ".... ... Since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under section 10 is limited by section 10(4) to the points specifically mentioned in the reference and matters incidental thereto the appropriate Government should frame the relevant orders of reference carefully and the questions, which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the

> question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably .. ..".
>
> (emphasis supplied)

The appropriate Government is, thus, expected to frame the order of reference carefully and the questions, which are intended to be dealt with by the Industrial Tribunal, should be worded as to leave no scope for ambiguity. In other words, the appropriate Government, while framing the order of reference, the questions which are raised and intended to be tried by the Tribunal should be framed carefully and not in a casual manner. Even if such questions are raised the Tribunal is not liable to construe them too technically and in a pedantic manner. In the instant case, the demand notice dated 18.9.91 given by the Union had clearly indicated that the retrenchment in question was illegal and unjustified, though particulars of illegality were not referred to in the notice of demand. However, as observed earlier, the pleadings i.e Statement of claim filed by the Union made, makes it absolutely clear that even the question of legality of the action of retrenchment

was also raised by the Union and that the Management was not taken by surprise. However, the Management chose to challenge the question of legality, as raised in the Statement of claim, contending that the Tribunal cannot enlarge the scope of reference and it was binding on the Tribunal to decide only as to whether the action of retrenchment was "justified". Therefore, in any case, the Management cannot claim that the Tribunal considered the question of legality also without giving an opportunity to the Management or that the Management was taken by surprise. It is thus clear that the Tribunal attempted to construe the reference fairly and reasonably and in a pragmatic manner. The Apex Court in **Agra Electric supply Company Limited** (supra), while considering the terms "justified" and "legal" has clearly held that it is plain that industrial jurisprudence is an alloy of law and social justice, and one cannot be too pedantic in construing the terms of a reference respecting a dispute for industrial adjudication. Undoubtedly, the Apex Court in that judgment has also observed that the words "justified" and "legal" are differently understood in the industrial jurisprudence and when the reference is comprehensive enough to cover both these concepts, it is within the jurisdiction of the Tribunal to investigate into

whether the retrenchment is legal, if legal, whether it is also justified. However, what is further observed in that judgment is more relevant, which reads thus :

> "In the ordinary law of contracts, when a thing done is legal there is an end of the matter but in industrial law the rigid rules of contract do not govern the situation and an amount of flexibility in the exercise of powers taking liberties with the strict rights of parties is permitted to Tribunals. Relying on a series of decisions of this Court for this wider ambit of jurisdiction permissible in industrial adjudication, the Tribunal has held that the grievance of the workmen that their services should come to an end by way of retirement without payment of gratuity is real and substantial and that pragmatic considerations justify a direction for payment of gratuity more or less prevalent in many industries in the region. This approach is informed by social justice, and it is not for us

> to fault the Tribunal when it makes a direction for payment of gratuity. We read the award in a composite and comprehensive sense as an award that the retirement is justified if it is accompanied by payment of gratuity.The dissection attempted in the submission made by the learned counsel is a distortion of the true intendment of the award".

In the present case, the Tribunal has considered the legality of the action holding that the grievance of the workmen was not only against the action but it was against its validity. Action may be justified but it was found to be illegal. The Management did not make any attempt either before the Tribunal or even before this Court to justify the action as legal. On the contrary, the stand of the Management all throughout was that the retrenchment compensation was rightly computed by the Management by applying a divider of 30 days. We have already held that the application of divider of 30 days for computing the retrenchment compensation was not only wrong but it was patently illegal. We have also held that the excess payment made under other heads cannot be taken

into account for making the shortfall good. Thus, the Tribunal was justified in considering the question of legality or validity of the action. The legality of the action touches the provisions of section 25F (a) and (b) of the ID Act. Clause (a) mandates the Management to give a notice before termination and clause (b) mandates the Management to offer retrenchment compensation which shall be equivalent of 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. These provisions are not only mandatory but imperative in nature. It is against this backdrop the Tribunal, has held that the action was illegal. In any case, in view of the stand of the Management that they rightly applied a divider of 30 days, they cannot now claim that they were taken by surprise and that they did not get an opportunity to meet the question of legality. The learned Single Judge has rightly observed in the impugned order while dismissing the writ petition that "though the reference made by the Government is only regarding justifiability and not legality but in this case finding on Issue no.2 indicates that the parties went before the Tribunal on both the questions". Mr Singh, placed reliance upon several judgments of the Apex Court in support of his submission that the

Tribunal enlarged the scope of the reference by entering into a question of legality of the action which, in our opinion, are of no avail to the appellant in view of the peculiar facts and circumstances of this case. We have already held that in the facts of the present case, the Tribunal was justified in entering into a question of legality also and the Tribunal cannot be said to have enlarged the scope of the reference. The submission made by Mr Singh that though the words "legal" and "justified" are differently understood in industrial adjudication, does not mean that the Tribunal in the present case was not justified, in entering into a question of legality of the action which ultimately was found to be patently illegal. In so far as the submission of Mr Dharap, learned counsel, based on section 11A of the ID Act is concerned, we do not propose to examine that submission, though we have our reservations about its correctness, in view of the fact we have already upheld the findings of the Tribunal and which have been affirmed by the learned Single Judge.

23. The submission of Mr Singh that the workmen had confined their allegations to justification and the Management’s motive while retrenching them is

factually incorrect. We have considered the pleadings in the earlier part of the judgment. They are absolutely clear. The Union had categorically raised an issue of legality in their pleadings and had also led evidence in support thereof. Moreover, the Management chose not to meet the allegation of the Union in respect of legality of the action. It cannot be said that the Union had never at any stage prior to the order of reference sought to challenge or even question the legality of action. As a matter of fact, though the illegality was not spelt out in the demand notice, the action was described as illegal. In the circumstances, we have no hesitation in holding that the Tribunal was justified in examining the legality of the action.

24. This takes us to consider the last question as to whether the Tribunal erred in awarding the reinstatement with full back wages after having accepted that all work had come to an end, merely because the question of closure was not referred to it. Mr Singh submitted that once having found that there was no business transacted after 18.9.1991 and even CHA Licence had also expired on 31.12.1993 it was clearly not proper for the Tribunal to award reinstatement with full back wages. He further

submitted that no relief can be granted beyond the date of closure and that no industrial dispute can survive after the closure. In support of his submission, he placed reliance upon the judgment of the Apex Court in **J.K.Synthetics Vs. Rajasthan Trade Union Kendra , (2001) 2 SCC 87**. On the other hand, Mr Dharap submitted that the Tribunal was wrong in considering the issue of closure and by doing so it travelled beyond the scope of the reference. The reference was only in respect of retrenchment and no case was made out by the Management about the closure of the company. He further submitted that since the action of retrenchment under section 25F (b) was void ab initio, the workmen deemed to be continued in the employment and, therefore, they are entitled for reinstatement with full back wages.

25. There was no dispute that after the retrenchment of remaining three workmen on 20.4.1992 there was a total closure of the establishment from 30.4.1992. It is against this backdrop, we would like to examine the issue raised by Mr Singh. The Apex Court in **J.K.Synthetics (supra)** was considering the powers and jurisdiction of the Tribunal while dealing the question as to whether or not the retrenchment was justified. The company in that case

was seeking justification of retrenchment of the workmen on the basis that there was a closure of section of its plant. The Tribunal, therefore, went into the question as to whether or not there was a closure for deciding the question as to the legality of retrenchment which the Apex Court in that judgment held that there was no error in considering the issue of closure. Paragraph 24 in that judgment may be useful. Paragraph 24 reads thus ;

> "24. Thus, in our view, the Division bench erred in coming to the conclusion that the Tribunal could not have gone into the question of closure as it was not referred to it. In our view, on the disputes which have been referred, particularly Dispute No.2 (set out hereinabove) it became absolutely necessary for the Tribunal to first ascertain whether there was a closure and whether such closure was bonafide."

The Apex Court in yet another judgment in **Hindustan Steel works Construction Ltd** (supra) considered the question as to whether the reinstatement is must where retrenchment is held to be illegal and/or

unjustified. In that case the Tribunal had moulded the relief and granted compensation instead of reinstatement. The Apex Court after considering the question involved in that judgment held that the Management was groaning under the weight of surplus and excessive man-power and as such the Industrial Tribunal was entitled to mould the relief to suit the justice of the case. It would be advantageous to quote paragraph 27 of the judgment which reads thus :

> "27. The appellants have not been able to satisfy us that the several reasons given by the Tribunal for not directing reinstatement of the appellants-workmen are incorrect as a fact or that they are irrelevant or impermissible in law. That the respondent-Corporation is groaning under the weight of surplus and excessive man-power is not denied as a fact; indeed, it is an indeniable fact. The Industrial Tribunal is entitled to take note of the said fact and to mould the relief to suit the justice of the case. In exercise of this Court’s power under Article 136 of the Constitution, it is not open to us to substitute our

> opinion for that of the Industrial Tribunal unless we find that the reasons given by it in the paras aforesaid are either incorrect factually or irrelevant or impermissible in law. Since we are not able to say so, these appeals are dismissed. The appeals filed by the Management also fail and are dismissed. No costs."

Therefore, in our opinion, once it is found that though the retrenchment was illegal it was justified, it is for the Tribunal to consider what relief the retrenched workers are entitled to. It is open for the Tribunal, in exercise of its jurisdiction, to take note of the circumstances in a particular case and decide not to grant the relief of reinstatement, but grant a relief of compensation to the workmen. In other words, whenever retrenchment is held to be justified, though it is illegal and improper and if their reinstatement is impossible and/or likely to cause great hardship on the Management, then the Court can mould the relief to suit the justice and award compensation to such workmen. In the present case, we have no hesitation in holding that the Tribunal was wrong in awarding reinstatement with

full back wages after having accepted that all work had come to an end inasmuch as there was a total closure of the establishment and, therefore, the order of Tribunal granting reinstatement was unjustified and liable to be set aside.

26. After having observed that the order of reinstatement was not justified in view of the total closure of the establishment, in our opinion, the ends of justice would be met if the relief of compensation to the workmen is granted. According to Mr Singh, learned counsel for the appellant, no business was transacted after 18.9.1991 and the CHA Licence also expired on 31.12.1993 and, therefore, in any case the workmen are not entitled for any relief beyond the date of closure and/or the date on which the licence had expired. The learned Single Judge, however, while disposing of the writ petition, had observed that if the Management pays the dues upto date on the basis of cut off date being 31.12.1995 then the Award will be marked satisfied. This observation was made on the basis of the statement of Mr Dharap, learned counsel for the workmen. Keeping the submissions advanced by the learned counsel appearing for the parties in view and considering that this Court, while admitting the Letters Patent

Appeal, had directed the management to deposit the arrears of salary upto 31.12.1995 in this Court, in our opinion, that amount should be paid to the workmen as compensation.

27. In the result, this Letters Patent Appeal is partly allowed. The order of reinstatement is quashed and set aside. The appellant-Management is directed to pay the amount, which they have deposited in this Court in pursuance of the order dated 5.9.1996, as compensation to the workmen. The Letters Patent Appeal is, accordingly, stands disposed of.

28. Mr C.U.Singh, learned counsel for the appellant, at this stage, submitted that the interim stay granted by this Court on 5.9.1996 be continued for a period of six weeks. Mr Dharap, learned counsel for the respondent, opposed the prayer and submitted that the workmen be allowed to withdraw atleast 50 percent of the amount deposited by the appellant. Having regard to the submissions of the learned counsel appearing for the parties and the overall facts and circumstances of the case, the interim order granted by this Court on 5.9.1996, shall remain operative for a further period of six weeks from today.

(D.B.BHOSALE,J.) **(S.B.MHASE,J.)**

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HIGH COURT
CIVILI APPELLATE SIDE

LETTERS PATENT APPEAL NO.170 OF 1996
IN
WRIT PETITION NO.1347 OF 1996
M/s DBH International Ltd.. Vs. 1. Their Workmen & Anr.

Date of Judgment:

9th March, 2005

For approval and signature

THE HON'BLE MR.JUSTICE S.B.MHASE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?

/home/rrt/db-0/lpa170-96